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ATTORNEY FOR APPELLANT:

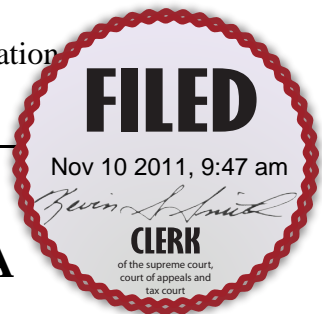
JOSEPH E. MORRISON
Roselawn, Indiana

ATTORNEYS FOR APPELLEE:

LAURA J. SIMS
DCS Newton County
Morocco, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)
C.T. AND J.D., Minor Children,)

D.T., Father,)

Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 56A03-1103-JT-111

APPEAL FROM THE NEWTON CIRCUIT COURT
The Honorable Jeryl F. Leach, Judge
Cause Nos. 56C01-1003-JT-1, 56C01-1003-JT-2

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

D.T. (“Father”) appeals the involuntary termination of his parental rights to his children, C.T. and J.D. Concluding that the trial court’s findings failed to satisfy the requirements of Indiana Code § 31-35-2-4(b), we reverse the court’s judgment as to Father and remand with instructions that the trial court enter additional findings to support its judgment.

Facts and Procedural History

Father is the biological Father of J.D., born in December 2002, and the presumptive father of C.T., born in December 2003. In November 2008, the local Newton County office of the Indiana Department of Child Services (“NCDSCS”) entered into a program of Informal Adjustment¹ with the children’s biological mother, S.T. (“Mother”), after substantiating a report that Mother was homeless, unemployed, and incapable of providing the children with basic life necessities without the State’s assistance.² At the time of the Informal Adjustment, Father was incarcerated in the State of Illinois on a burglary conviction.

NCDSCS initially assisted the family by helping Mother and the children move into an apartment and providing home-based counseling services. However, in January 2009 Mother, who has been diagnosed with mild mental retardation and suffers from a seizure disorder, contacted her NCDSCS case manager to inform the case manager she could no

¹ A program of Informal Adjustment is a negotiated agreement between a family and a local office of the Indiana Department of Child Services whereby the family agrees to participate in various services provided by the county in an effort to prevent the child/children from being formally deemed children in need of services (CHINS). See Ind. Code 31-34-8 *et. seq.*

² Mother’s parental rights to both children were involuntarily terminated by the trial court in its February 2011 judgment. Mother, however, does not participate in this appeal. Consequently, we shall limit our recitation of the facts to those pertinent solely to Father’s appeal.

longer handle the children and was afraid she would “explode” on them. Appellant’s Appendix at 27. The same day, the children³ were removed from Mother’s care and placed in foster care for their safety, and Mother agreed to seek in-patient mental health services.

C.T. and J.D. were adjudicated children in need of services (“CHINS”) in February 2009, and additional services were ordered for Mother and the children. Dispositional orders formally removing the children from Father’s and Mother’s care and custody were later entered as to both children.⁴ For the next year, Mother’s participation in reunification services was sporadic and ultimately unsuccessful, while Father remained incarcerated and unavailable to care for the children. Consequently, in March 2010 NCDCS filed petitions under separate cause numbers seeking the involuntary termination of Father’s and Mother’s parental rights to both children.

A consolidated evidentiary hearing on the termination petitions was held in November 2010. During the hearing, NCDCS presented considerable evidence regarding Mother’s significant mental health issues, refusal to participate in and/or successfully complete a majority of the court-ordered reunification services, including only visiting with the children if her new boyfriend was also permitted to attend, and her continuing inability to provide the children with a safe and stable home environment. Evidence

³ J.D. and C.T. are special needs children. J.D. has been diagnosed with attention deficit hyperactivity disorder (“ADHD”), oppositional defiant disorder, a seizure disorder, and mild mental retardation. C.T. has been diagnosed with ADHD and obsessive-compulsive disorder. In addition, both children exhibit difficult and sometimes violent behaviors.

⁴ According to testimony during the termination hearing, the trial court’s dispositional order as to J.D. was entered in February 2009, but the dispositional order as to C.T. was not entered until June 2009 due to unresolved paternity issues.

presented by NCDCS as to Father's ability to parent the children was minimal and centered around the facts that Father remained incarcerated until approximately three weeks before the termination hearing, did not participate in any reunification services, and had virtually no relationship with the children. NCDCS case workers, the court-appointed special advocate ("CASA"), and other service providers, including Mother's therapist and visitation supervisor, all admitted during the termination hearing, however, that they had never observed Father interact with the children and/or with Mother and thus had no idea as to whether Father was capable of providing the children with a safe and stable home environment.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On February 11, 2011, the court issued its judgment terminating Father's parental rights to both children. Father now appeals.

Discussion and Decision

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. In re I.A., 934 N.E.2d 1127, 1132 (Ind. 2010). "A parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty issues.'" Id. (quoting Troxel v. Granville, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000)). "Indeed[,] the parent-child relationship is 'one of the most valued relationships in our culture.'" I.A., 934 N.E.2d at 1132 (quoting Neal v. DeKalb Cnty. Div. of Family & Children, 796 N.E.2d 280, 285 (Ind. 2003)). Nevertheless, parental rights are "not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition

to terminate parental rights.” I.A., 934 N.E.2d at 1132 (citing In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004), trans. denied). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id.

When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. D.D., 804 N.E.2d at 265. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. Here, the trial court made specific findings and conclusions in its termination order. When a trial court enters specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied; see also Bester, 839 N.E.2d at 147. Clear error is that which leaves us with a definite and firm conviction that a mistake has been made. In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997).

In Indiana, before parental rights may be involuntarily terminated, the State is required to allege and prove, among other things:

- (B) that one (1) of the following is true:
 - (i) There is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied.

- (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
- (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;
- (C) that termination is in the best interests of the child; and
- (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). In addition, NCDCS has the burden of pleading and proving each element of Indiana Code § 31-35-2-4(b)(2) by clear and convincing evidence before the trial court can terminate parental rights. See also In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)).

Father asserts that he is entitled to reversal because the trial court's judgment does not comport with Indiana's termination statute in that there are no findings indicating (1) that termination of Father's parental rights is in the best interests of the children and (2) that NCDCS has a satisfactory plan for the future care and treatment of both children. See Ind. Code § 31-35-2-4(b)(2)(C) and (D). Although NCDCS acknowledges that the trial court's judgment does not include a "specific conclusion" regarding the best interests and satisfactory plan elements as is required by Indiana Code § 31-35-2-4(b)(2), it nevertheless asserts that "it is clear that it was the intent of the court to comply with those statutory requirements as it included the termination statute in its order." Appellee's Brief at 8.

Our review of the trial court's judgments⁵ reveals that although the court made seventeen specific findings, it neglected to make any findings specifically pertaining to the statutory requirements delineated in Indiana Code § 31-35-2-4(b)(2)(C) and (D). Additionally, the great majority of the trial court's findings relate solely to Mother. In fact, other than mentioning Father's paternity status as to each child and the fact he married Mother in 2003, the only specific findings pertaining to Father are as follows:

16. [Father] . . . has had virtually no relationship with the children. In 2007 he pleaded guilty to burglary and [was] sentenced to eight (8) years in prison. He was incarcerated at Pittsfield Work Camp, Pittsfield, Illinois. He was released after the Verified Petition for Termination of Parent-Child Relationship was filed, and three (3) weeks prior to the [f]act[-]finding [h]earing on said [p]etition.
17. [Father] and [Mother] have resumed their relationship upon his release, and desire to be reunified with these children and to raise them together.

Appellant's Appendix at 22-23. Moreover, the trial court's conclusions consist primarily of a recitation of Indiana's termination statute and various applicable case law, apart from the following pertinent conclusions pertaining to Father:

8. [T]he Court finds clear and convincing evidence that continuation of the parent[-]child relationship between the children and [Father], poses a threat to the well-being of the children, in that [Father] has a long history of criminal activity, has no history of involvement with the children, and his plan for the future care of the children involves continuing to have [Mother] assist with their care and supervision, when [Mother] has demonstrate[d] her inability to [do] so safely.

⁵ For clarification purposes, we note that the trial court issued two judgments under separate cause numbers in terminating Father's parental rights to the children. Because both judgments contain nearly identical language, apart from certain identifying information contained in the heading, we cite to only one judgment throughout this opinion.

9. The children have special needs which require heightened parenting skills and optimum parental supervision. These parents lack the necessary skills to meet the needs of these children.
10. The children have a need for permanency, as they have remained in temporary care for nearly two (2) years while one parent fails to complete or benefit from services and the other remained incarcerated.

Id. at 25.

Termination of parental rights is of such importance that we must be convinced the trial court has based its judgment on proper considerations. Parks v. Delaware Cnty. Dep't of Child Servs., 862 N.E.2d 1275, 1280-1281 (Ind. Ct. App. 2007). Unfortunately, we cannot make such a determination based on the trial court's findings set forth above. See In re Estate of Inlow, 735 N.E.2d 240, 250 (Ind. Ct. App. 2000) (stating that special findings must contain the ultimate facts from which a trial court has determined the legal rights of the parties). Moreover, we are bound by the findings of the trial court on the issues covered and are not at liberty to look to other evidence to support its judgment. See generally Parks, 862 N.E.2d at 1280.

As previously explained, Indiana Code § 31-35-2-4(b)(2) sets forth the specific requirements that must be alleged and proved by clear and convincing evidence in order to involuntarily terminate a parent-child relationship. See Slip. Op. at 5. Here, in failing to specifically find that (1) termination of Father's parental rights is in the children's best interests and (2) that NCDCS has a satisfactory plan for the future care of both children, the trial court committed clear error. See In re L.B., 616 N.E.2d 406, 407 (Ind. Ct. App.

1993) (stating that failure to ensure State fully complied with all conditions precedent to the termination of parental rights “constitutes fundamental error”), trans. denied.

Ever mindful of our deferential standard of review, a thorough review of the record herein reveals that, by all accounts, none of the caseworkers or services providers ever observed Father interact with either the children and/or Mother. Additionally, the evidence reveals that Father initiated contact with NCDCS four days after his release from incarceration, requested visitation with the children, and immediately began actively seeking employment. This is not to say that all evidence regarding Father supports continuation of the CHINS case and/or reunification. To the contrary, NCDCS case manager Meagan Hiatt informed the court that, apart from a single letter in December 2009, Father failed to initiate and/or maintain any communication with NCDCS throughout the entirety of his incarceration despite having been provided with Hiatt’s contact information and notice of all CHINS proceedings. Hiatt also testified that Father has a significant history of criminal activity, including a conviction for domestic battery resulting from an incident during which Father struck Mother while she was holding one of the children, leaving a mark on the child’s head. Additionally, Father’s own testimony confirms that he intends to continue his relationship with Mother and to involve Mother in the care of the children should he regain custody despite Mother’s unresolved parenting deficiencies.

Based on the foregoing, we conclude that the trial court’s judgment simply does not provide us with reasonable assurances that NCDCS proved all of the statutory dictates of Indiana Code § 31-35-2-4(b)(2) by clear and convincing evidence as they

relate to Father. Moreover, our review of the record in its entirety yields evidence that could support either outcome as to Father, yet we are in no position to weigh such evidence or to attempt to read the trial court's mind in regard to its findings of fact as NCDCS would have us do. In reaching this decision, we are keenly aware of the fact that the children's sense of permanency and well-being hangs in the balance. Further delay in the final resolution of the children's cases is certainly regrettable. Nevertheless, under the facts of this case we are constrained to reverse the trial court's judgment as to Father and remand this cause with instructions for the trial court to enter additional findings to support its judgment. See, e.g., In re J.Q., 836 N.E.2d 961, 967 (Ind. Ct. App. 2005) (concluding that in order to properly balance competing interests of parents in raising children with interests of the State in protecting children from harm, a trial court needs to "carefully follow the language and logic laid out by our legislature" in the CHINS and termination statutes).

Judgment reversed and remanded with instructions.

BAKER, J., and KIRSCH, J., concur.